

UNITED STATES DISTRICT COURT

for the
District of OregonIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)Benito Valdez and Jose Valdez for
Buccal Swabs (DNA Samples)

Case No. 3:20-mc-00374 A-B

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Benito Valdez (DOB: 2/11/1957), located at FCI Sheridan OR, and

Jose Valdez (DOB: 1/21/1974) Located at Clackamas County Jail, for Buccal Swabs (DNA Samples).

located in the _____ District of _____ Oregon _____, there is now concealed (identify the person or describe the property to be seized):

DNA of Benito Valdez (DOB: 2/11/1957) and

DNA of Jose Valdez (DOB: 1/21/1974)

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 U.S.C. 922(g)(1)Offense Description
Felon in Possession of a Firearm

The application is based on these facts:

See affidavit which is attached hereto and incorporated herein by this reference.

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Nathan Miller, Special Agent, ATF

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
Telephone at 5:35 a.m./p.m. (specify reliable electronic means).

Date: 04/24/2020City and state: Portland, Oregon

Judge's signature

HON. JOHN V. ACOSTA, United States Magistrate Judge

Printed name and title

DISTRICT OF OREGON, ss:

AFFIDAVIT OF NATHAN MILLER

Affidavit in Support of an Application for a Search Warrant for a Phone

I, Nathan Miller, being duly sworn, do hereby depose and state as follows:

Introduction and Agent Background

1. I am a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and have been since July 2014. My current assignment is to the Portland, Oregon Field Office. My training includes twenty-seven (27) weeks of Criminal Investigator and ATF Special Agent Basic Training at the Federal Law Enforcement Training Center in Glynco, Georgia. As a Special Agent with ATF, part of my duties and responsibilities include conducting criminal investigations for possible violations of federal firearms, explosives, and arson laws.

2. On April 8, 2020, I filed an affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the persons:

- Benito Valdez (DOB: 2/11/1957) with FBI number: 603280P2.
- Jose Valdez (DOB: 1/21/1974) with FBI number: 195230TA9.

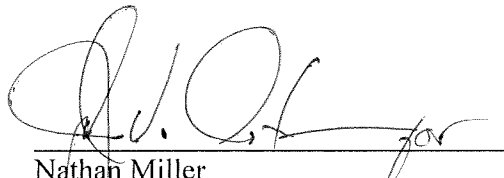
for DNA evidence, and a warrant was issued. That application and affidavit is attached and incorporated herein as Exhibit 1, and sets forth my belief that I have probable cause to believe that the search of Benito Valdez and Jose Valdez persons for DNA may produce a match to the potential DNA left on firearms associated with this investigation, which would constitute a violation of Title 18 United States Code, Section 922(g)(1), Felon in Possession of a Firearm.

3. Even though the warrant was issued on April 8, 2020, I did not have the appropriate personal protective equipment to permit me to access the custodial institutions in which either defendant is being held in custody until April 23, 2020, at which time the warrant

had expired. Therefore, I am applying for a new warrant, supported by the affidavit attached in Exhibit 1 and the probable cause articulated in the accompanying affidavit.

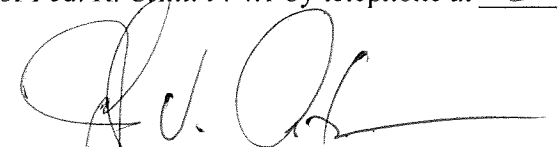
4. As set forth in the attached application and affidavit, I request a search warrant be issued authorizing myself and/or agents/officers assisting me, to search and seize DNA, in the form of oral swab standards from the person of Benito Valdez (DOB: 2/11/1957) with FBI number: 603280P2, and the person of Jose Valdez (DOB: 1/21/1974) with FBI number: 195230TA9. These oral swabs will be obtained in an appropriate manner and environment by reasonable means for the purpose of testing and comparison with evidence in this investigation. The DNA evidence is sought in order that an authorized law enforcement forensic laboratory can compare and confirm whether Benito Valdez and/or Jose Valdez DNA is a match with the possible DNA profile obtained from the firearm related to this investigation.

5. Prior to being submitted to the Court, this affidavit, the accompanying application, and the requested search warrant were all reviewed by Assistant United States Attorney (AUSA) Greg Nyhys, and AUSA Nyhus advised me that in his opinion the affidavit and application are legally and factually sufficient to establish probable cause to support the issuance of the requested warrant.



Nathan Miller
ATF Special Agent

Sworn in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone at 5:35
a.m.(p.m.) on April 8, 2020.



HONORABLE JOHN V. ACOSTA
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

for the
District of OregonIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)Benito Valdez and Jose Valdez for
Buccal Swabs (DNA Samples)

Case No. 3:20-mc-00313 A-B

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Benito Valdez (DOB: 2/11/1957), located at FCI Sheridan OR, and

Jose Valdez (DOB: 1/21/1974) Located at Clackamas County Jail, for Buccal Swabs (DNA Samples).

located in the _____ District of _____ Oregon, there is now concealed (identify the person or describe the property to be seized):

DNA of Benito Valdez (DOB: 2/11/1957) and
DNA of Jose Valdez (DOB: 1/21/1974)

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 U.S.C. 922(g)(1)Offense Description
Felon in Possession of a FirearmCertified to be a true and correct
copy of original filed in this District

Dated: 04/08/2020

MARY L. MORAN, Clerk of Court
U.S. District Court of Oregon

By: s/J. Prowell

Pages 1 Through 10

The application is based on these facts:
See affidavit which is attached hereto and incorporated herein by this reference.

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Nathan Miller, Special Agent, ATF

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
Telephone at 11:45a.m. (specify reliable electronic means).

Date: 04/08/2020

City and state: Portland, Oregon

Jolie A. Russo, United States Magistrate Judge

Printed name and title

DISTRICT OF OREGON, ss:

AFFIDAVIT OF NATHAN MILLER

Affidavit in Support of an Application for a Search Warrant for a Phone

I, Nathan Miller, being duly sworn, do hereby depose and state as follows:

Introduction and Agent Background

1. I am a Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and have been since July 2014. My current assignment is to the Portland, Oregon Field Office. My training includes twenty-seven (27) weeks of Criminal Investigator and ATF Special Agent Basic Training at the Federal Law Enforcement Training Center in Glynco, Georgia. As a Special Agent with ATF, part of my duties and responsibilities include conducting criminal investigations for possible violations of federal firearms, explosives, and arson laws.

2. I submit this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the persons:

- Benito Valdez (DOB: 2/11/1957) with FBI number: 603280P2.
- Jose Valdez (DOB: 1/21/1974) with FBI number: 195230TA9.

for DNA evidence. As set forth below, I have probable cause to believe that the search of Benito Valdez and Jose Valdez persons for DNA may produce a match to the potential DNA left on firearms associated with this investigation, which would constitute a violation of Title 18 United States Code, Section 922(g)(1), Felon in Possession of a Firearm.

3. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter. The facts set forth in this affidavit are based on my own personal knowledge, knowledge obtained from other individuals during this investigation, including other law enforcement officers, interviews of witnesses, a review of records related to this investigation, communications with others who

have knowledge of the events and circumstances described herein, and information gained through my training and experience.

Applicable Law

4. As set forth below, I have probable cause to believe and do believe that Benito Valdez and Jose Valdez have committed the following crime, and evidence related to that crime will be on the persons of Benito Valdez and Jose Valdez:

- Title 18 U.S.C. § 922(g)(1): It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess a firearm or ammunition that have been shipped or transported in interstate or foreign commerce.

Statement of Probable Cause

5. On April 10, 2019, at approximately 0159 hours, Witness (W1) contacted the Forrest Grove Police Department and reported Benito Valdez and Jose Valdez were leaving the area of Cedar Street and 21st Street in Forrest Grove, Oregon in a gold Chrysler van with a temporary tag. W1 stated Benito Valdez and Jose Valdez had narcotics and stolen firearms and were on their way to Aloha, Oregon to sell or trade guns for narcotics. W1 described the firearms as two pistols, a shotgun, and a rifle.

6. Washington County Sheriff's Office (WCSO) Deputy Waldron located a vehicle matching the above listed description near SW 209th Avenue, Beaverton, Oregon. Deputy Waldron observed a broken taillight and a traffic violation while following the vehicle. Deputy Waldron described an older male driver and a passenger wearing a hat making many movements towards the rear of the van. At approximately 0225 hours, Deputy Waldron attempted to stop the van, which pulled over at an intersection. Once Deputy Waldron opened the door of his

patrol vehicle, the van sped away and a pursuit ensued. At one point, a pit maneuver was attempted to stop the pursuit, but was unsuccessful. The pursuit was terminated at approximately 0227 hours for public safety concerns.

7. At approximately 0235 hours, WCSO Deputy Beat located the van parked at 13720 SW Scholls Ferry Road, Beaverton, Oregon. The van was still running, the sliding passenger door was open, and the van was unoccupied. Prior to discovering the van, Deputy Beat observed two males walking away from the vehicle at the corner of SW Davies Road and SW Schools Ferry Road in Beaverton, Oregon (approximately one block west of the van). Deputy Beat notated that one male was carrying a backpack and the other was carrying a small black bag.

8. WCSO Deputy Roher located and arrested Benito Valdez outside one of the apartments near the van. Benito Valdez gave a fake name and date of birth when contacted. Approximately ten feet from Benito Valdez, hidden next to an air conditioning unit, was a small black guitar case. Inside the case was a variety of assorted ammunition and the following firearms:

- Colt revolver, model Diamondback, .38 special, SN: P31421.
- American Derringer Co derringer, model M-1, .45 caliber, SN: 839533.
- Remington shotgun, model 870 Express, 12 gauge, SN: C455235A.

9. Benito Valdez was read his rights per *Miranda*. Benito Valdez stated he was picked up in a gold van at the max stop on 3rd Avenue in Hillsboro, Oregon. Benito Valdez said a male named “Kevin or Kyle” was driving the vehicle, and Jose Valdez was with him. Benito Valdez stated they were riding around and smoking methamphetamine that belonged to Jose

Valdez. Benito said the driver (Kevin or Kyle) of the vehicle eluded police because he had a warrant, and after they got away, they just walked away from the van.

10. Beaverton Police Department (BPD) Officer Hinckley arrested Jose Valdez near SW Barrows Road, Beaverton, Oregon (south of van location). Jose Valdez was covered in water after appearing from the Fanno Creek area. Jose Valdez was read his rights per *Miranda*. Jose Valdez stated he ran from police because he knew he had a warrant. Jose Valdez denied driving the suspect vehicle and said he was alone.

11. A search warrant was later executed on the suspect van. Inside the van officers recovered items that included narcotics indicia, 3.8 grams of suspected heroin, 3.9 grams of suspected methamphetamine, firearm and ammunition holsters, and over 300 rounds of assorted ammunition (exact count not available on property report). A large quantity of the ammunition was found in tool bag located directly in-between and behind the front, two seats of the van. Inside the tool bag was a box of Winchester Super X, 12 gauge shotgun shells (rifled slugs). The headstamp of the shells listed "W-W 12 GAUGE".

12. A review of WCSO propt reports indicated the firearms were swabbed for DNA, and those swabs were preserved as:

- 45032-0001, swab from Colt revolver.
- 45032-0002, swab from Colt derringer.
- 45032-0003, swab from Remington shotgun.

Interview with W1:

13. I interviewed W1 on June 5, 2019, and June 12, 2019. W1 stated he/she had known Benito Valdez and Jose Valdez for multiple years and met them through his/her use of narcotics. W1 stated on April 10, 2019, he/she returned to his/her residence and found Jose

Valdez occupied the room he/she rented. W1 said Jose Valdez was aggressive, always had guns, and refused to vacate the room. W1 stated he/she heard Benito Valdez and Jose Valdez talk about going to Aloha, Oregon, and saw them pack up the guns in a small black violin case. W1 stated when Benito Valdez and Jose Valdez left, he/she called police and told them Benito Valdez and Jose Valdez were headed to Aloha, Oregon to sell guns and drugs. W1 stated the guns belonged to Jose Valdez. W1 said Jose Valdez always had a small silver gun with a wooden handle on him, and later identified the Derringer pistol from photographs taken the night of the arrest. W1 stated he/she had also seen a .22 caliber rifle, a shotgun, and another pistol. W1 was emphatic that the guns belonged to Jose Valdez and he/she never saw Benito Valdez with a gun.

14. W1 stated he/she returned to his/her residence a few days after the arrest to move his/her stuff out. W1 said Jose Valdez's .22 caliber rifle was still in his/her bedroom when he/she retrieved their property.

15. I asked W1 why he/she contacted the police to tell them about Benito Valdez and Jose Valdez's illegal activities when they were a source of narcotics for W1. W1 began to cry and told me Jose Valdez had given him/her a lot of heroin that evening. W1 stated Jose Valdez raped him/her while threatening him/her with the derringer pistol. W1 stated when he/she asked Benito Valdez for help; Benito Valdez encouraged/allowed the rape to happen. W1 stated he/she called the police after Benito Valdez and Jose Valdez left, but never reported it because he/she was scarred. The rape has sense been reported to Forrest Grove Police Department.

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Interview with Jose Valdez:

16. On July 19, 2029, I arrested Jose Valdez at the WCSO jail in Hillsboro, Oregon. Jose Valdez was read his rights per *Miranda* card, and when asked if he understood his rights, responded in the affirmative. Jose Valdez told me he did not want to go to prison and wanted to cooperate with the investigation. I subsequently transported Jose Valdez to the ATF Portland Field Office and conducted a recorded interview with Jose Valdez in the presence of SA Jacobs.

17. Jose Valdez described himself as an enforcer for Benito Valdez and his aunt Irma Valdez, who both dealt methamphetamine in the Washington County Area. Jose Valdez stated he was an addict and Benito Valdez would often get him high, and then ask him to help collect drug debts.

18. Jose Valdez said on the night of his arrest, Benito Valdez woke him up, gave him methamphetamine, and got into the aforementioned gold van. Benito Valdez continued to give Jose Valdez methamphetamine while inside the van. Jose Valdez stated Benito Valdez was on his phone with someone named "Chris" and recalled there was some kind of trade Benito was attempting to set up with Chris that involved trading guns for drugs. Jose Valdez stated Chris did not answer the phone and Benito Valdez was attempting to call others to collect drug debts.

19. Jose Valdez said he did not load any guns into the car, but did remember there being bags in the car. Jose Valdez stated someone named "Kyle" was driving the van when they were pulled over by WCSO. Jose Valdez denied taking a bag of firearms out of the van after they ran from the deputies.

20. I showed Jose Valdez a photograph of the recovered firearms found next to Benito Valdez. Jose Valdez stated he would often work on the guns Benito Valdez took in on trade, that he had worked on the shotgun recently, but handled all of the guns at one point.

Interstate Nexus:

21. I spoke with SA Grigore; a specialist in the recognition and identification of firearms, ammunition, and their place of manufacture. SA Grigore informed me that based on her training and experience, the aforementioned firearms and Winchester ammunition were not manufactured in the State of Oregon, and therefore, would have to have traveled in interstate commerce to be possessed in Oregon.

Prior Felony Convictions:

22. I have reviewed a computerized criminal history (CCH) for Benito Valdez. The CCH revealed Benito Valdez had one prior felony convictions:

- 1992, Failure to Appear, Possession of Cocaine, Driving while Suspended, Washington County Circuit Court, State of Oregon, case number C920291CR.
- 1992, Felon in Possession of Firearm, Clatsop County Circuit Court, State of Oregon, case number 921343.
- 1995, Driving while Suspended, Washington County Circuit Court, State of Oregon, case number C941881CR.
- 1998, Driving while Suspended, Tillamook County Circuit Court, State of Oregon, case number: 91069.
- 2000, Delivery and Possession of Controlled Substance, Multnomah County Circuit Court, State of Oregon, case number 000332249.
- 2005, Felon in Possession of Firearm and Unlawful Use of Weapon, Washington County Circuit Court, State of Oregon, case number C053850CR.
- 2006, Escape in 2nd Degree, Washington County Circuit Court, State of Oregon, case number C061784CR.
- 2007, Delivery and Possession of Methamphetamine, Washington County Circuit Court, State of Oregon, case number C071531CR.
- 2012, Possession of Methamphetamine, Washington County Circuit Court, State of Oregon, case number C122420CR.
- 2014, Delivery of Methamphetamine, Washington County Circuit Court, State of Oregon, case number C141181CR

23. I have reviewed a CCH for Jose Valdez. The CCH revealed Jose Valdez has the following felony convictions:

- 2004, Felon in Possession of Firearm, United States District Court, Portland, Oregon, case number unknown.
- 2010, Delivery of Methamphetamine, Washington County Circuit Court, State of Oregon, case number C102425CR.
- 2013, Delivery of Methamphetamine within 1,000 Feet of School and Delivery of Heroin, Washington County Circuit Court, State of Oregon, case number C130622CR.
- 2004, Delivery of Methamphetamine and Felon in Possession of Firearm, Washington County Circuit Court, State of Oregon, case number C141541CR.

Knowledge:

24. After reviewing Benito Valdez and Jose Valdez CCHs, I noted they each had been convicted for Felon in Possession of firearm and thus would have knowledge they are not allowed to possess firearms.

Conclusion

25. Based on the foregoing, I have probable cause to believe, and I do believe, that the crime of Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1) has been committed by Benito Valdez and Jose Valdez, and that evidence of that offense, as described above, is presently located on the persons of Benito Valdez and Jose Valdez.

26. I request a search warrant be issued authorizing myself and/or agents/officers assisting me, to search and seize DNA, in the form of oral swab standards from the person of Benito Valdez (DOB: 2/11/1957) with FBI number: 603280P2, and the person of Jose Valdez (DOB: 1/21/1974) with FBI number: 195230TA9. These oral swabs will be obtained in an appropriate manner and environment by reasonable means for the purpose of testing and

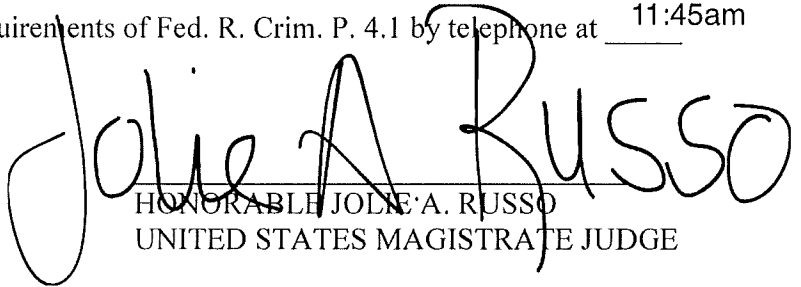
comparison with evidence in this investigation. The DNA evidence is sought in order that an authorized law enforcement forensic laboratory can compare and confirm whether Benito Valdez and/or Jose Valdez DNA is a match with the possible DNA profile obtained from the firearm related to this investigation.

27. Prior to being submitted to the Court, this affidavit, the accompanying application, and the requested search warrant were all reviewed by Assistant United States Attorney (AUSA) Greg Nyhys, and AUSA Nyhus advised me that in his opinion the affidavit and application are legally and factually sufficient to establish probable cause to support the issuance of the requested warrant.

By telephone pursuant to Fed.R.Crim.P.4.1

Nathan Miller
ATF Special Agent

Sworn in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone at 11:45am
a.m/p.m. on April 8, 2020.


HONORABLE JOLIE A. RUSSO
UNITED STATES MAGISTRATE JUDGE